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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,329	12/31/2003	Edgar Matias	P1282US00	8128
54640	7590	08/23/2007		
PERRY + CURRIER 1300 YONGE STREET SUITE 500 TORONTO, ON M4T-1X3 CANADA			EXAMINER PICKETT, JOHN G	
			ART UNIT 3728	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's request for reconsideration has been fully considered but is not persuasive. The Supreme Court has held that the TSM test is not the only test when considering the obviousness under 35 USC 103(a).

When considering the equivalence of adhesive and hook-and-loop fastening, Geary represents evidence of art recognized equivalence. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

When considering Aileo, "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill." *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1740, 82 USPQ2d 1396 (2007). Both Aileo and Shawler stack pads to adjust size, however Aileo connects the stacked arrangement to the mounting location. This is well within the level of ordinary skill in the art and yields only predictable results. It is proper to take account of the "inferences and creative steps that a person of ordinary skill in the art would employ." See *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 1727, 1731, 82 USPQ2d 1385, 1396 (2007). See also *Id.* at 1742, 82 USPQ2d at 1397 ("A person of ordinary skill is also a person of ordinary creativity, not an automaton.")

The Supreme Court has provided guidelines for determining obviousness based on the Graham factors. *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007). "A combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 1731, 82 USPQ2d at 1396. "When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability." *Id.* For the same reason, "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill." *Id.* at 1740, 82 USPQ2d 1396. "Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." *Id.* at 1742, 82 USPQ2d at 1397.

The previous rejections are respectfully maintained.

/Greg Pickett/
Examiner
AU 3728